

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Part 90 of the Commission's)	WT Docket No. 05-62
Rules to Provide for Flexible Use of the 896-901)	
MHz and 935-940 MHz Bands Allotted to the)	
Business and Industrial Land Transportation)	
Pool)	

To: The Commission

COMMENTS OF SOUTHERNLINC WIRELESS

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Dated: May 18, 2005

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EXECUTIVE SUMMARY

SouthernLINC Wireless, a subsidiary of Southern Company and provider of Commercial Mobile Radio Service to rural and urban areas of the Southeastern United States, applauds the FCC for its efforts to increase the flexibility of the 900 MHz Business and Industrial/Land Transportation ("B/ILT") spectrum.

As described in more detail below, SouthernLINC Wireless supports the FCC's tentative conclusion to auction the 900 MHz B/ILT spectrum on a geographic-area basis. SouthernLINC Wireless recommends that the FCC license the 900 MHz B/ILT channels by Economic Area, rather than by Major Economic Area, because it would increase competition, improve spectrum access, enhance service to rural areas, and reduce transaction costs and regulatory burdens, without resulting in a significant number of unsold licenses.

SouthernLINC Wireless also supports several other FCC proposals. In particular, the FCC should adopt a band plan of nineteen blocks of ten contiguous channels and one block of nine contiguous channels. The size and contiguous nature of the proposed channel blocks would expand access to spectrum for regional providers, permit the use of new and innovative technologies, and reduce transaction costs. The FCC should also permit licensees to demonstrate "substantial service" within ten years of the initial grant of the license and determine an incumbent's "originally licensed" 40 dBuV/m contour from its exact license parameters.

Finally, the FCC should not auction the 900 MHz B/ILT channels until it resolves the pending license applications filed by ACI 900, Inc. While the dismissal of these applications would increase competition for these channels and their auctionable value, it would not endanger the reconfiguration of the 800 MHz band.

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Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless"), through its undersigned counsel, respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* in the above-captioned matter,¹ pursuant to Section 1.415 of the Federal Communications Commission's ("FCC") rules.²

SouthernLINC Wireless commends the FCC for its efforts to increase the flexibility of the 900 MHz Business and Industrial/Land Transportation ("B/ILT") spectrum and urges it to take the following actions. In particular, SouthernLINC Wireless supports the FCC's tentative conclusion to auction the 900 MHz B/ILT spectrum on a geographic-area basis. While

¹ In re Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814 (2005) [hereinafter *NPRM*]. The *NPRM* was published in the Federal Register on March 18, 2005. 70 Fed. Reg. 13143 (Mar. 18, 2005). The Wireless Telecommunications Bureau subsequently granted an extension of time for filing comments and reply comments. In re Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, *Order*, DA 05-1084 (2005).

² 47 C.F.R. § 1.415 (2004).

SouthernLINC Wireless recommends auctioning the 900 MHz B/ILT channels by Economic Area, rather than by Major Economic Area, it favors a band plan consisting of nineteen blocks of ten contiguous channels each and one block of nine contiguous channels. The FCC should also adopt its proposal to require licensees to demonstrate "substantial service" within ten years of the initial grant of the license and should determine an incumbent's "originally licensed" 40 dBuV/m contour from its exact license parameters. Finally, to maximize the amount of spectrum available, the FCC should not auction the 900 MHz B/ILT channels until it resolves the pending license applications filed by ACI 900, Inc.

I. BACKGROUND

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a Commercial Mobile Radio Service ("CMRS") provider, SouthernLINC Wireless operates a digital 800 MHz Specialized Mobile Radio ("SMR") system using Motorola's proprietary Integrated Digital Enhanced Network technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

SouthernLINC Wireless provides these services to close to 300,000 subscribers in a 127,000 square mile service area covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Furthermore, SouthernLINC Wireless serves many areas of Florida and Mississippi that are not served by any other advanced wireless dispatch provider. The continued viability and growth of SouthernLINC Wireless's system is important to all of its rural and urban subscribers.

II. THE FCC SHOULD AUCTION THE 900 MHZ B/ILT SPECTRUM ON AN ECONOMIC AREA BASIS

SouthernLINC Wireless supports the FCC's tentative conclusion to auction the 900 MHz B/ILT spectrum on a geographic-area basis.³ The Economic Area is the appropriate size for the geographic service area because it would increase competition, improve spectrum access, enhance service to rural areas, and reduce transaction costs and regulatory burdens, without resulting in a significant number of unsold licenses.

The licensing of the 900 MHz B/ILT spectrum on an Economic Area basis would increase competition for these licenses and for commercial wireless services generally. In the *NPRM*, the FCC suggested that the use of Economic Areas "may provide greater opportunities for small and medium-sized businesses to successfully compete against larger, well-financed bidders."⁴

The prior 900 MHz auctions appear to confirm that the licensing of SMR channels on a Major Trading Area ("MTA") basis has hindered the attempts of small and regional providers to secure enough spectrum for a viable CMRS network in this band. For example, a single nationwide carrier dominated Auction No. 55, even though the FCC had authorized several small and regional carriers to bid on the 900 MHz SMR licenses.⁵ The nationwide carrier won forty-six of the fifty-five licenses awarded and outspent all other carriers combined by approximately

³ *NPRM*, 20 FCC Rcd 3814 ¶ 17.

⁴ *Id.* ¶ 22.

⁵ 900 MHz Specialized Mobile Radio Service Spectrum Auction: 17 Qualified Bidders, Report No. AUC-04-55-E (Auction No. 55), *Public Notice*, 19 FCC Rcd 1095 (2004).

\$4.6 million to \$256,000.⁶ This discrepancy indicates that the use of the MTA as the geographic area would not enable small and regional carriers to compete effectively for commercial spectrum in the 900 MHz B/ILT band and, thus, that the MTA is not the appropriate size for the geographic service area.

By contrast, an Economic Area licensing approach would improve access to the 900 MHz B/ILT spectrum for all providers. While licensees should have the right to adjust the size of their licensed service areas through aggregation, partition, or disaggregation,⁷ the adoption of the Economic Area as the basic geographic service area would ensure that the size of the service area will not preclude small and regional carriers from obtaining licenses during the auction. This approach would allow small and regional carriers to meet their licensing and coverage needs, while still providing larger carriers the opportunity to meet their super-regional or nationwide coverage needs through spectrum aggregation either during or after the auction.

In addition, an Economic Area licensing approach would enhance service to rural and underserved areas. The FCC has acknowledged that a rural CMRS provider's ability to acquire spectrum increases as the size of the geographic license area decreases.⁸ The licensing of 900 MHz B/ILT spectrum on an Economic Area basis would encourage the deployment of spectrum-based services in rural areas and allow the provision of service to areas not normally served by the larger carriers. If the FCC were to license geographic areas larger than Economic Areas for

⁶ 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced, Report No. AUC-04-55-F (Auction No. 55), *Public Notice*, 19 FCC Rcd 3921 (2004) [hereinafter *Auction No. 55 Public Notice*].

⁷ *NPRM*, 20 FCC Rcd 3814 ¶ 20.

⁸ *E.g.*, Federal Communications Commission, *Spectrum Policy Task Force Report*, ET Docket No. 02-135 at 59-60 (2002), available at <http://www.fcc.gov/sptf>.

this spectrum, however, it could restrict licensing by small and regional carriers with non-nationwide coverage needs.

An Economic Area licensing approach would also reduce transaction costs and regulatory burdens. In the *NPRM*, the FCC stated that "[a]dopting an EA-based licensing scheme may permit small bidders and rural companies wishing smaller license areas to obtain them directly at auction rather than facing the uncertainty and transaction costs of working out post-auction partitioning agreements."⁹ Because the prescribed geographic area will never correspond to every bidder's desires, licensees must inevitably partition service areas or disaggregate spectrum following any auction. This rearrangement of service areas and spectrum necessarily results in transaction costs and regulatory burdens. By starting with a smaller geographic area, the FCC could shift the bulk of those transaction costs and regulatory burdens to nationwide licensees that seek to aggregate channel blocks and service areas. These nationwide licensees are more likely than regional licensees to possess the resources to absorb such costs and burdens.

Although the FCC expressed concern that an Economic Area approach could "result in a large number of unsold licenses (particularly in markets where an entire EA is encumbered),"¹⁰ the FCC has conducted several overlay auctions for encumbered Economic Area licenses without

⁹ *NPRM*, 20 FCC Rcd 3814 ¶ 24. "If geographic service area licenses are assigned with an initial size that does not represent the needs of service providers, then transaction costs are incurred, as carriers seek to acquire rights to spectrum they wish to serve and divest their interest in areas they do not wish to serve." In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Notice of Proposed Rule Making*, 18 FCC Rcd 20802, 20834 ¶ 63 (2003) [hereinafter *Rural NPRM*].

¹⁰ *NPRM*, 20 FCC Rcd 3814 ¶ 24.

a significant amount of leftover spectrum.¹¹ The recent licensing activity of ACI 900 further suggests that the 900 MHz band is not encumbered enough to deter bidders.¹²

III. THE FCC SHOULD ADOPT THE PROPOSED BAND PLAN FOR THE REMAINING 900 MHZ B/ILT SPECTRUM

SouthernLINC Wireless supports the proposed band plan for the auction of 900 MHz B/ILT spectrum. In the *NPRM*, the FCC asked if it should "license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels"¹³ SouthernLINC Wireless agrees that the size and contiguous nature of the proposed channel blocks would promote the deployment of CMRS operations by expanding access to spectrum for regional providers, permitting the use of new and innovative technologies, and reducing transaction costs.¹⁴

The proposed band plan would expand access to spectrum for regional CMRS providers. In the *NPRM*, the FCC suggested that its proposal would "strike[] a balance in affording small,

¹¹ *E.g., Auction No. 55 Public Notice*, 19 FCC Rcd 3921 (55 of 60 licenses sold); 800 MHz SMR Service Lower 80 Channels Auction Closes, Report No. AUC-36-G (Auction No. 36), *Public Notice*, DA 00-2752 (2000) (524 of 525 licenses sold); 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes, Report No. AUC-34-G (Auction No. 34), *Public Notice*, 15 FCC Rcd 17162 (2000) (1,030 of 1,050 licenses sold); 800 MHz SMR Auction Closes, Winning Bidders In The Auction of 525 Specialized Mobile Radio Licenses, Report No. AUC-97-16-G (Auction No. 16), *Public Notice*, 12 FCC Rcd 20417 (1997) (all 2,800 licenses sold); FCC Announces Winning Bidders In The Auction Of 1020 Licenses To Provide 900 MHz SMR In Major Trading Areas, *Public Notice*, DA 96-586 (1996) (all 1,020 licenses sold).

¹² In August 2004, ACI 900 submitted over 500 applications requesting most, if not all, unlicensed 900 MHz Business Pool frequencies throughout the nation. The number of channels listed on these applications indicates the 900 MHz band is not heavily encumbered in many areas. Because ACI 900 has withdrawn a number of its applications, and the remainder are defective and subject to dismissal, the FCC should have sufficient clear spectrum to entice potential bidders.

¹³ *NPRM*, 20 FCC Rcd 3814 ¶ 26.

¹⁴ *Id.* ¶ 28.

medium and large operators the opportunity to obtain sufficient spectrum to establish viable and competitive wide-area systems."¹⁵ While the FCC has acknowledged that large channel blocks limit market entry for small carriers and that small channel blocks limit wide-area operations for large carriers,¹⁶ neither large nor small channel blocks are especially beneficial to regional carriers. Regional carriers often lack the resources to outbid well-financed nationwide carriers for large channel blocks but still need enough channels to construct a viable wide-area system. By combining nine- and ten-channel blocks with an Economic Area licensing approach, however, the FCC's proposal will establish a compromise position that will enable small, medium, and large CMRS providers to acquire spectrum.¹⁷ This increased access to spectrum will promote competition and enhance consumer choice for mobile wireless services.

The proposed band plan would also permit the use of new and innovative technologies on the 900 MHz B/ILT spectrum. As the FCC noted in the *NPRM*, "licensing the spectrum in contiguous blocks promotes the viability of CMRS services . . . since it permits the flexible and efficient use of technologies over the contiguous spectrum."¹⁸ In particular, contiguous channels could accommodate SMR licensees currently operating in the 800 MHz band. While the FCC has typically licensed 900 MHz channels with a bandwidth of 12.5 kHz, it has licensed 800 MHz SMR channels with a bandwidth of 25 kHz.¹⁹ This disparity in bandwidths has limited the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Although the FCC observed that "a more viable option [for an EA-based licensing approach] might include nine blocks of twenty non-contiguous channels each and one block of nineteen non-contiguous channels," *id.* ¶ 30, this proposal would eliminate the technical advantages of contiguous spectrum.

¹⁸ *Id.* ¶ 28.

¹⁹ 47 C.F.R. § 90.613.

ability of SMR providers to operate dual-band systems at 800/900 MHz. The licensing of contiguous channels would effectively enlarge the bandwidth at 900 MHz, allowing 800 MHz licensees to expand their commercial operations to the 900 MHz band by using equipment designed for 25 kHz channels. Licensees could also introduce new technologies and service offerings that require large amounts of contiguous spectrum.

Finally, the proposed band plan would reduce transaction costs associated with the licensing process. If the FCC were to assign 900 MHz B/ILT licenses without sufficient spectrum to deploy a wide-area system, or without contiguous spectrum to support wideband operations, then carriers will incur transaction costs as they seek to acquire rights to additional channels. The FCC's proposal would minimize the transaction costs arising from such spectrum aggregation, without prejudicing licensees that intend to operate with 12.5 kHz bandwidth.

IV. LICENSEES SHOULD HAVE TEN YEARS TO DEMONSTRATE SUBSTANTIAL SERVICE FOR THEIR AUCTIONED 900 MHz B/ILT LICENSES

The FCC should adopt a substantial service requirement for the 900 MHz B/ILT band and permit licensees to satisfy this requirement within ten years of the initial license grant. While the FCC has already applied the substantial service alternative to virtually all geographic-area licenses,²⁰ several other reasons support the expansion of this performance requirement to the 900 MHz B/ILT spectrum.

A ten-year substantial service requirement would encourage the deployment of services to rural areas. In the *NPRM*, the FCC stated that a substantial service performance requirement

²⁰ In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 19078, 19119 ¶ 73, 19120 ¶ 75 (2004) [hereinafter *Rural Report and Order*].

"could provide greater flexibility for parties interested in . . . providing service to rural or sparsely populated areas."²¹ As a CMRS provider in rural portions of the Southeastern United States, SouthernLINC Wireless agrees that a substantial service alternative will allow licensees to provide service in otherwise underserved areas, without having to duplicate the efforts of urban carriers just to meet a population- or geographic-based construction standard. Thus, the substantial service alternative will improve the likelihood of rural deployment.

A ten-year substantial service requirement would also give licensees the flexibility to develop and implement a variety of business plans. In the *NPRM*, the FCC stated that "flexible performance standards may enhance the rapid deployment of new technologies . . . and allow licensees to respond to market demands for service."²² The FCC has previously found that a ten-year substantial service requirement will allow the introduction of new and innovative technologies²³ and "provide licensees with greater flexibility to determine how best to implement

²¹ *NPRM*, 20 FCC Rcd 3814 ¶ 45. While the FCC previously concluded that a substantial service performance requirement will enable licensees "to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements," *Rural Report and Order*, 19 FCC Rcd at 19121 ¶ 76, it has also noted that this alternative "provides licensees with greater flexibility and therefore may result in the more efficient use of spectrum and the provision of service to rural, remote, and insular areas." In re Amendment of Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, *Report and Order*, 12 FCC Rcd 10785, 10843 ¶ 111-112 (1997) [hereinafter *WCS Report and Order*].

²² *NPRM*, 20 FCC Rcd 3814 ¶ 50.

²³ In re Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18623 ¶ 42, 18624 ¶ 46 (1997) [hereinafter *39 GHz Report and Order*]; In re Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12660 ¶ 267 (1997) [hereinafter *LMDS Report and Order*].

their business plans."²⁴ SouthernLINC Wireless concurs that 900 MHz B/ILT licensees should have a similar ten-year period to explore different business strategies and to determine which areas within their geographic license to serve "based on demand, market conditions, and their business plans."²⁵

In addition, a ten-year substantial service performance requirement would be consistent with the requirements for other wireless services. Although the FCC has provided a five-year substantial service requirement for 900 MHz SMR spectrum, it has consistently established a ten-year substantial service requirement when adopting flexible-use policies for wireless services.²⁶ Thus, a ten-year substantial service rule for the 900 MHz B/ILT spectrum will advance the FCC's goal of ensuring regulatory parity among flexible-use wireless services.

Although commenters may complain that a ten-year performance requirement would not result in spectrum efficiency, the FCC has already concluded that licensing spectrum through competitive bidding will ensure the efficient spectrum use. "Because a license will be assigned .

²⁴ In re Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket No. 02-8, *Report and Order*, 17 FCC Rcd 9980, 10010 ¶ 72 (2002) [hereinafter *Reallocation Report and Order*]; see In re Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Report and Order*, 15 FCC Rcd 16934, 16951 ¶ 37 (2000) [hereinafter *24 GHz Report and Order*].

²⁵ *Rural NPRM*, 18 FCC Rcd at 20820 ¶ 35 n.77.

²⁶ E.g., *Reallocation Report and Order*, 17 FCC Rcd at 10010 ¶ 72; In re Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685, 6707 ¶ 48 (2002); In re Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497, 1540 ¶ 75 (1999); *24 GHz Report and Order*, 15 FCC Rcd at 16951 ¶ 37, 16953 ¶ 41 (2000); *39 GHz Report and Order*, 12 FCC Rcd at 18624 ¶ 46; *LMDS Report and Order*, 12 FCC Rcd at 12659 ¶ 267; *WCS Report and Order*, 12 FCC Rcd at 10843 ¶ 112.

. . . through competitive bidding, it will be assigned efficiently to a firm that has shown[,] by its willingness to pay market value[,] its willingness to put the license to its best use."²⁷ Thus, the auction of 900 MHz B/ILT spectrum will provide licensees with the incentive to provide service in a timely manner.

V. THE FCC SHOULD DETERMINE AN INCUMBENT'S "ORIGINALLY LICENSED" SERVICE CONTOUR FROM ITS LICENSED PARAMETERS

SouthernLINC Wireless agrees with the FCC's proposal "to define the existing service area of an incumbent B/ILT system by its originally-licensed 40 dBuV/m field strength contour."²⁸ Because the FCC has apparently not interpreted the meaning of "originally-licensed" for purposes of the 900 MHz rules, SouthernLINC Wireless recommends the calculation of an incumbent's 40 dBuV/m service contour using the effective radiated power and the composite height of the antenna above average terrain listed on the license.

As contemplated by the FCC in the *NPRM* and past orders, this calculation methodology will "allow incumbents to continue existing operations without harmful interference and to give them flexibility to modify or augment their systems so long as they do not encroach on the geographic area licensee's operations."²⁹ Incumbent licensees could add or modify transmit sites

²⁷ *WCS Report and Order*, 12 FCC Rcd at 10844 ¶ 114; see *LMDS Report and Order*, 12 FCC Rcd at 12661 ¶ 271; *39 GHz Report and Order*, 12 FCC Rcd at 18623 ¶ 41.

²⁸ *NPRM*, 20 FCC Rcd 3814 ¶ 36.

²⁹ *Id.*; see In re Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884, 6901 ¶ 47 (1995) [hereinafter *900 MHz SMR Report and Order*], *aff'd*, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2655-56 ¶ 41 (1995) [hereinafter *900 MHz SMR Reconsideration Order*].

in their existing service area, provided they do not expand their 40 dBuV/m contour.³⁰ In other words, this calculation methodology will ensure that an incumbent licensee receives interference protection for the exact contour of its existing service area, without hindering the geographic area licensee's access to the spectrum.

VI. THE FCC SHOULD DISMISS THE PENDING ACI 900 APPLICATIONS BEFORE THE START OF THE AUCTION

The FCC should not auction the 900 MHz B/ILT channels until it acts upon the pending license applications filed by ACI 900, Inc., a subsidiary of Nextel Communications, Inc. The dismissal of these applications would increase competition for these channels, as well as their auctionable value, without endangering the reconfiguration of the 800 MHz band.

In August 2004, ACI 900 submitted over 500 applications requesting most, if not all, unlicensed 900 MHz Business Pool frequencies throughout the nation for private, internal communications.³¹ Several parties responded with petitions alleging that the applications are fatally defective because ACI 900 had (1) requested more than the maximum number of trunked channels per application, (2) disregarded the channel loading requirement, (3) misrepresented its proposed channel loading and the intended use of the channels, and (4) failed to meet the eligibility and use restrictions.³² Based on these rule violations, the parties asked the FCC to deny ACI 900's applications.

³⁰ *NPRM*, 20 FCC Rcd 3814 ¶ 36; *900 MHz SMR Report and Order*, 10 FCC Rcd at 6901 ¶ 47; *900 MHz SMR Reconsideration Order*, 11 FCC Rcd at 2655-56 ¶ 41.

³¹ Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277, 18277 (2004). Although ACI 900 subsequently withdrew 224 of these applications after the FCC temporarily suspended processing them, *In re Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Order*, 20 FCC Rcd 1560 ¶ 10 (2005), hundreds of applications remain on file.

³² *E.g.*, *Informal Petition to Deny of SouthernLINC Wireless*, File Nos. 0001840872 *et al.* (Apr. 5, 2005); *Informal Petition to Deny of Salt River Project Agricultural Improvement & Power*

(continued...)

Although the FCC deferred consideration of the oppositions until it determines whether the *NPRM* will render those oppositions moot,³³ it should resolve these applications before auctioning the 900 MHz B/ILT spectrum. Failure to dismiss ACI 900's "suspect" applications would deprive potential bidders of the ability to compete for this spectrum. The grant of ACI 900's applications would also decrease the auctionable value of the remaining licenses because not enough unencumbered 900 MHz spectrum would remain to deploy a viable network.

The dismissal of ACI 900's applications would also not endanger the reconfiguration of the 800 MHz band. Although Nextel may claim that it requires virtually every available 900 MHz Business Pool channel to facilitate the 800 MHz band reconfiguration, it may bid on these 900 MHz channels, as needed, in the proposed auction.

VII. CONCLUSION

SouthernLINC Wireless supports increased flexibility for the 900 MHz B/ILT spectrum. As described above, SouthernLINC Wireless agrees with the FCC's tentative conclusion to auction this spectrum on a geographic-area basis. Although SouthernLINC Wireless believes that the FCC should license 900 MHz B/ILT channels by Economic Area, it favors a band plan consisting of nineteen blocks of ten contiguous channels and one block of nine contiguous channels. SouthernLINC Wireless also supports the FCC's proposals to permit licensees to demonstrate "substantial service" within ten years of the initial grant of the license and to

District (Oct. 4, 2004); Informal Petition to Deny of Saia Communications, File Nos. 0001840273, *et al.* (Sept. 15, 2004); Informal Opposition of Verizon Wireless, File No. 000184539, *et al.* (Sept. 14, 2004).

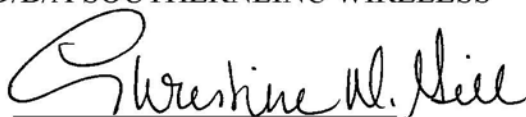
³³ In re Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814 ¶ 68 (2005).

determine an incumbent's "originally licensed" 40 dBuV/m contour from its exact license parameters. To optimize the amount of spectrum available at the auction, the FCC should expedite its resolution of the pending 900 MHz Business Pool applications filed by ACI 900.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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